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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,381	12/30/2003	Matthew T. Fitton	20,091	8953
23556 7590 10/18/2007 KIMBERLY-CLARK WORLDWIDE, INC. Catherine E. Wolf 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 10/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/750,381

Applicant(s)

FITTON, MATTHEW T.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5-12, 19-30, 33-35 and 38-41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 13-18, 31, 32, 36, 37 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/19/07</u> <u>10/5/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed July 26, 2007 have been fully considered but they are not persuasive.

With respect to applicant's arguments regarding the rejection of claims 31, 32, 36 and 42: Applicant argues that Coates does not teach an absorbent pad having a back portion that terminates in the crotch portion of the garment shell. This is not found persuasive because applicant has not set forth clear boundaries for the claimed crotch region. The absorbent pad back portion taught by Coates terminates in the crotch region of the instant article inasmuch as the region where the pad terminates is disposed in the crotch region of the wearer, which necessarily corresponds to the crotch region of the garment shell for proper fit.

With respect to applicant's arguments regarding the rejection of claims 1, 2, 4, 13, 14, 15-18 and 37: Applicant argues that Coates does not teach or suggest two elasticized waistbands. In response to applicant's arguments against the Coates reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The Office has acknowledged this deficiency explicitly in the previous Office action and introduced the prior art of Yamamoto to remedy the deficiency. Yamamoto teaches a support waistband as part of an article that is clearly adapted to be worn inside a garment shell such as that taught by Coates. Applicant further argues that Yamamoto does not teach or suggest using the instant suspended absorbent pad in combination with a garment shell. While applicant correctly notes that Yamamoto teaches providing a separate outer cover for wear with the instant article, outer

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cover is not explicitly defined. However, the emphasis lies in the fact that the outer cover is a separate physical entity. Further, it flows inherently and necessarily without needing to be explicitly taught by Yamamoto, that the wearer will wear a garment shell in the form of pants or skirt or other covering of the lower torso region (which also would cover the pad) and will not wear the instant pad as the sole article of covering for their nether region during use. Thus the combined teaching of Coates and Yamamoto meets all of the limitations of independent claim 1.

Applicants' arguments with regard to dependent claim 37 has been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on July 19, 2007 was filed after the mailing date of the non-final action on May 30, 2007. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 31, 32, 36 and 42 are rejected under 35 U.S.C. 102(e) as being anticipated by Coates (U.S. Patent Application Publication No. 2003/0216705).

With respect to **claim 31**: Coates teaches an absorbent garment 10 comprising a garment shell 15 and an inner absorbent assembly, wherein the garment shell 15 comprises a front panel

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assembly defining a front waist region, a back panel assembly defining a back waist region, and a crotch region extending longitudinally between and interconnecting the front waist region, and the back waist region the front panel assembly being connected to the back panel assembly so as to define a waist opening and at least one leg opening, the garment shell 15 further comprising an elasticized shell waistband 11, the elasticized shell waistband adapted to encircle the wearer, the garment shell 15 defining a body-side surface and an outward surface; wherein the inner absorbent assembly comprises: an absorbent pad 50, the absorbent pad 50 defining a front region and a back region, the front region being connected to the front waist region of the garment shell 15, and the back region terminating in the crotch region of the garment shell 15 (Fig. 10); and at least one posterior support strap 121 which connects the absorbent pad to the back waist region of the garment shell 15. Coates implicitly describes an embodiment wherein at least one posterior support strap 121 connects the absorbent pad to the back waist region of the garment shell 15 while remaining free of attachment to the crotch region of the garment shell 15, such configuration resulting from the front two straps 121 in Fig. 3D not being utilized. (Figs. 3D, 10; ¶¶0050, 0065, 0086, 0087, 0089)

With respect to **claim 32**: The at least one posterior support strap 121 is narrower in width than the absorbent pad 50. (Fig. 3D, ¶0065)

With respect to **claim 36**: Absorbent garment 10 further comprises at least one anterior support strap 121 connecting the elasticized support waistband to the absorbent pad 50. (Fig. 3D, ¶0065)

With respect to **claim 42**: The garment 10 also includes a crotch region interconnecting the front and back panels to define two leg openings. (Fig. 10)

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4, 13, 14 and 15-18 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coates ('603) in view of Yamamoto et al (U.S. Patent No. 5,700,256).

With respect to claim 1: Coates teaches an absorbent garment 10 comprising a garment shell 15 and an inner absorbent assembly, wherein the garment shell 15 comprises a front panel assembly defining a front waist region, and a back panel assembly defining a back waist region (Fig. 10E), the front panel assembly being connected to the back panel assembly so as to define a waist opening and at least one leg opening (Fig. 10E), the garment shell 15 further comprising an elasticized shell waistband 11, the elasticized shell waistband 11 adapted to encircle the wearer, the garment shell 15 defining a body-side surface and an outward surface; wherein the inner absorbent assembly comprises: an absorbent pad, the absorbent pad defining a front region and a back region.

Coates does not teach an elasticized support waistband. Yamamoto teaches an absorbent pad suspended from an elastic waistband by pairs of anterior and posterior elastomeric suspending straps adapted for use with an outer cover such as a garment shell. The elasticized support waistband defines a front waist section and a back waist section, the front waist section being connected to an absorbent pad front region ('256, Fig. 1); and at least one posterior support strap 3 connecting the elasticized support waistband to the absorbent pad ('256, Fig. 1); wherein the elasticized support waistband is capable of being connected to the body-side surface of the garment shell taught by Coates via straps 121 taught by Coates.

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Yamamoto teaches that the straps allow for adjustment by the wearer to both bring the pad into proper fitting contact with the user's pubic area and the maintenance of the pad in this desired position to prevent leakage, therefore it would be obvious to one of ordinary skill in the art to modify the article of Coates so as to have an elastic support waistband as taught by Yamamoto be comprised of elastomeric material attached via at least one posterior support strap to an absorbent pad as taught by Yamamoto to provide accessibility the user in terms of adjustment for proper fit and to prevent leakage. ('256, Fig. 1, Col. 2, lines 13-18, 25-27, 35-50)

With respect to **claim 2**: The elasticized shell waistband of the combined teaching of Coates and Yamamoto defines a shell waistband edge, and the elasticized support waistband of the combined teaching of Coates and Yamamoto defines a support waistband edge, and the shell waistband edge and the support waistband edge are coterminous. ('705, Fig. 10)

With respect to **claim 4**: The at least one posterior support strap 3 taught by Yamamoto is narrower in width than the absorbent pad 1. ('256, Fig. 1)

With respect to **claim 13**: The garment of the combined teaching of Coates and Yamamoto further comprises at least one anterior support strap connecting the elasticized support waistband to the absorbent pad. ('256, Fig. 1)

With respect to **claim 14**: The anterior support strap is connected to the front region of the absorbent pad of the combined teaching of Coates and Yamamoto. ('256, Fig. 1)

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With respect to **claims 15,37**: Coates does not teach explicitly that the at least one posterior strap is elastomeric. Yamamoto teaches an absorbent pad suspended from an elastic waistband by pairs of anterior and posterior elastomeric suspending straps adapted for use with an outer cover such as a garment shell. Yamamoto teaches that the straps allow for adjustment by the wearer to both bring the pad into proper fitting contact with the user's pubic area and the maintenance of the pad in this desired position to prevent leakage therefore it would be obvious to one of ordinary skill in the art to modify the straps taught by Coates so as to be comprised of elastomeric material as taught by Yamamoto to provide accessibility the user in terms of adjustment for proper fit and to prevent leakage. ('256, Fig. 1, Col. 2, lines 13-18, 25-27, 35-50)

With respect to **claim 16**: The garment of the combined teaching of Coates and Yamamoto also includes a crotch region interconnecting the front and back panels to define two leg openings. ('705, Fig. 10)

With respect to **claim 17**: The absorbent pad back region of the combined teaching of Coates and Yamamoto defines a back end and the absorbent pad front region defines a front end, and wherein the absorbent pad further defines two side edges, each side edge extending between the front and back end, and wherein the two side edges, the front end, and the back end are urged upward generally toward the wearer to define an upwardly urged periphery of the absorbent pad. ('705, Figs. 3D, 10; '256, Fig. 1)

With respect to **claim 18**: The combined teaching of Coates and Yamamoto does not explicitly teach that the upwardly urged periphery of the absorbent pad comprises absorbent material that provides at least about 20% of an absorbent capacity of the absorbent pad. However applicant

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has not established sufficient criticality for such a capacity percentage being present in the upwardly urged periphery. Since the amount of absorbent material present in the periphery will dictate the amount of fluid absorbed and thus stopped from leaking outwardly from the garment, such capacity percentage is considered herein to be a result effective variable, and thus it would be obvious to one of ordinary skill in the art to upwardly urge the side, front and back edges of the pad of the combined teaching of Yamamoto and Coates so as to achieve a configuration in which an upwardly urged periphery is formed that provides at least 20% of the capacity of said pad. It has been held that where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. Discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art. *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand
Examiner
Art Unit 3761

October 10, 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', with a long, sweeping horizontal line extending to the right.